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The 1992 Compensation Advisory Committee Report on Compensation

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REPORT AND
RECOMMENDATIONS OF THE
COMPENSATION ADVISORY
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March 30, 1993

The Honourable Colin Gabelmann
Attorney General
Province of British Columbia
Parliament Buildings
Victoria, B.C. V8V 1X4
Canada

Dear Minister:

In accordance with the Terms of Reference provided to the 1992 Compensation Advisory Committee relating to the Compensation of Provincial Court Judges, I hereby submit the Report and Recommendations on behalf of the 1992 Compensation Advisory Committee.

Yours truly,


C.J. CONNAGHAN
Chair
1992 Compensation Advisory Committee

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**The
1992 Compensation Advisory
Committee
Report on Compensation**

Submitted March 29, 1993

By the:

**1992 Compensation Advisory Committee
on Provincial Court Judges**

**Chair, Charles J. Connaghan
Prof. Elizabeth R. Edinger
Ms. Marie Jessup**

EXECUTIVE SUMMARY

The 1992 Compensation Advisory Committee, appointed December 23, 1992 by the Attorney General, was given a dual task.

In accordance with the Provincial Court Act, the Advisory Committee was assigned to report and make recommendations on remuneration, allowances and benefits of judges of the Provincial Court.

At the request of the Attorney General, the Honourable Colin Gabelmann, the Advisory Committee was also asked to consider and make recommendations with respect to an alternative means for establishing this compensation.

The report of the 1992 Advisory Committee is submitted in two parts:

- ☐ **The Report on Compensation** -- dealing with the assignment under statutory provisions and contained herein; and
- ☐ **The Report on Process** for establishing judicial compensation, submitted as a separate document.

The Advisory Committee has seen itself as an independent review body and has conducted its task accordingly. We are cognizant of current economic realities facing the government of British Columbia and, in our deliberations, we have sought to take fully into account all relevant factors, including several specifically brought to our attention by the provincial government. We have arrived at our conclusions based upon objective and independent assessment of these factors.

We have been guided by a strong belief that the success of a democratic society relies heavily upon a judiciary that is independent from the legislative and executive functions, both in fact and in perception.

Our work included an extensive information-gathering process which involved comparisons of compensation for Provincial Court judges in British Columbia with judges of other courts at both the Federal and Provincial levels. Comparisons with other potentially relevant groups such as practitioners, members of administrative tribunals and civil servants also were conducted. It also involved tours of court facilities, meetings with judges of the Provincial Court and the receipt and review of submissions from the Government of British Columbia, the Provincial Court Judges Association, the Law Society of British Columbia, the B.C. Branch of the Canadian Bar Association, the Judicial Council, Chief Judge Diebolt and one other judge.

Executive Summary cont'd

We reviewed potential alternative mechanisms currently in place elsewhere in Canada and abroad and we studied the workings of previous Compensation Advisory Committees. We found it curious that many of the recommendations of the 1986, 1988 and 1990 Advisory Committees were not followed by the governments of the day.

One of the striking pieces of information arising from our analysis is the fact that a very substantial gap has developed during the last decade between the annual salary levels of the federally-appointed and federally-paid judges of the British Columbia Supreme Court and those of the provincially-appointed and provincially-paid judges of the Provincial Court. The former currently is 46% higher than the latter.

In the end result, the 1992 Advisory Committee has turned to the Consumer Price Index (CPI) as a relevant means to arrive at a recommended salary level for judges of the Provincial Court of British Columbia.

As a base, we have used the \$35,000 level in effect in 1974, the year immediately before the Provincial Court took on its present form as a full-time bench composed solely of trained lawyers. The adjustments that would have been required to modify judges' salaries according to the changes in the Vancouver CPI over the years since 1974 would bring the 1993 level to \$118,402.

We believe that to be appropriate and therefore recommend that, effective from January 1, 1993, puisne judges of the Provincial Court of British Columbia receive an annual salary of \$118,402.

In our analysis, we found no evidence of a tradition whereby the Chief and Associate Judges of the Provincial Court receive significantly higher salaries than puisne judges. We also found, however, that the existing dollar differentials are little changed from a decade or more ago and we believe some adjustment in the differentials is appropriate now. Therefore, we recommended that, effective from January 1, 1993, the additional annual remuneration received by the Chief Judge be increased to \$10,000 from its present \$9,000, and that the additional annual remuneration received by the Associate Chief judges be increased to \$6,000 from its present \$4,000.

Past Advisory Committees traditionally have made recommendations for the two years proceeding their appointment. However, owing to the fact that in our **REPORT ON PROCESS** we have recommended a new mechanism for setting judicial remuneration effective in 1994, the Advisory Committee believes it would be inappropriate to make salary recommendations for that year.

Executive Summary cont'd

By statute, the Advisory Committee is requested to review "remuneration, allowances and benefits", including the pension plan provided for judges of the Provincial Court. We noted with some dismay that the 1988 Advisory Committee made recommendations relative to the pension plan, that these recommendations were approved by a legislative committee and by the Legislative Assembly, but have not been implemented.

Notwithstanding the direct request of the Government of British Columbia that no changes be recommended pending the completion of the current review of pension plans by the Superannuation Commission, we believe that the changes recommended by the 1988 Compensation Advisory Committee should be put into effect as soon as is reasonably practical.

We therefore recommend that this be done, specifically to provide that pension benefit calculations for judges of the Provincial Court be based on the best three-year average earnings, rather than the best five-year average; and that judges with ten years of contributory service be permitted to take early retirement at age 55 without penalty.

In addition, we recommend that the government seriously consider the 1992 pension proposals submitted by the Provincial Court Judges Association. These proposals include granting judges the right to a full pension after 20 years of service, regardless of age; enabling a surviving spouse, on the death of a retired judge, to receive a pension equal to two-thirds of the judge's pension; and the basing of pension benefits on salary at termination.

The 1992 Advisory Committee also recommends that life insurance coverage for judges of the Provincial Court be extended up to 70 years, from the present 65, for those judges who sit beyond the age of 65; that retired judges be made eligible for inclusion in the dental plan upon personally paying the premiums; and that each judge receive an annual professional allowance of \$1,500 to defray costs of legal subscriptions and attendance at educational seminars.

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December 23, 1992

JAN 4 1992

Mr. C.J. Connaghan
Connaghan & Associates
Suite 510 - 789 West Pender Street
Vancouver, British Columbia
V6C 1H2

Dear Mr. Connaghan:

This will confirm your appointment to act as Chair of the Compensation Advisory Committee established pursuant to Section 7.1 of the Provincial Court Act. The other members appointed to the committee are Professor Elizabeth Edinger of the U.B.C. Faculty of Law and Ms. Marie Jessup, Vice-President, Finance and Bursar, Capilano College.

In addition to reporting on the remuneration, allowances and benefits of the Judges of the Court and making recommendations with respect to those matters, I request the committee to consider and make recommendations with respect to an alternative means for establishing judicial remuneration, allowances and benefits to that now provided in Section 7.1 of the Provincial Court Act.

Thank you for agreeing to chair the Committee. I look forward to receiving your report in due course.

Yours sincerely,

Colin Gabelmann
Attorney General

cc: His Honour Chief Judge W.J. Diebolt
His Honour Judge W. G. MacDonald, President,
British Columbia Provincial Court
Judges' Association

Province of
British Columbia

Attorney General

Parliament Buildings
Victoria, British Columbia
V8V 1X4

Terms of Reference

The Terms of Reference for the 1992 Compensation Advisory Committee on Provincial Court Judges were established in part by statute and in part by the request of the Attorney General of British Columbia.

Section 7.1 (2) of the *Provincial Court Act*, R.S.B.C. 1979 c.341, reads:

"The Attorney General shall, as soon as practicable after this section comes into force, and in each even numbered year after that, appoint 3 persons as a Compensation Advisory Committee".

Sub-section (4) sets out the tasks assigned to the Compensation Advisory Committee, as follows:

"The function of the Committee is to make a report to the Attorney General, not later than December 31 in the year in which it is appointed, on all matters respecting the remuneration, allowances and benefits of judges of the court and to make recommendations with respect to those matters."

In a letter to the Chair of the 1992 Advisory Committee, dated December 23, 1992, the Honourable Colin Gabelmann, Attorney General for British Columbia, asked that, in addition to its statutory mandate, the Advisory Committee:

". . . consider and make recommendations with respect to an alternative means for establishing judicial remuneration, allowances and benefits to that now provided in Section 7.1 of the *Provincial Court Act*".

In effect, the statutory provisions and the Attorney General's request gave the 1992 Advisory Committee a dual assignment:

- ☐ To review judicial remuneration; and
- ☐ To assess the process in which the Advisory Committee participated.

A Guiding Principle

The members of the 1992 Compensation Advisory Committee have conducted their work in accordance with the principle that their recommendations must reflect the fact that a judiciary independent from the legislative and executive branches of government, in fact and perception, is a cornerstone of the Canadian constitutional framework.

The importance of this concept, especially with regard to the need for a remuneration-setting mechanism which reflects this principle, is described at length in our Report on Process. However, the remuneration levels themselves are rife with implications for judicial independence and therefore require some elaboration in this Report on Compensation.

This Advisory Committee has adopted as its own the summary of the precepts of judicial independence contained in the 1988 Report of the Ontario Provincial Courts Committee. Thus, our brief discussion of the relationship between judicial independence and judicial remuneration levels is based on that document.

In *Valente v. Queen* (1985) 2 S.C.R. 673 at 698, the Supreme Court stressed that ensuring the financial security of judges is one of the minimum conditions of judicial independence.

That means security of salary or other remuneration, and where appropriate, security of pension. The essence of such security is that the right to salary and pension should be established by law and not be subject to arbitrary interference by the Executive in a manner that could affect judicial independence. In the case of pension, the essential distinction is between a right to a pension and a pension that depends on the grace or favour of the Executive.

The *Valente* decision sets out minimum conditions for judicial independence. However, the Ontario Provincial Courts Committee asserted that they could not accept "for purposes of our inquiry, this narrow view of the impact of judicial independence. . . . (W)e believe that our affirmation of independence has a number of specific consequences for the design and the content of a compensation regime for Provincial Court judges."

The Ontario Provincial Courts Committee thus claimed that there are three important ways in which the concept of judicial independence ought to influence judicial salaries.

First, it is widely accepted that governments may not reduce the salaries of sitting judges, individually or collectively, without infringing the principle of judicial independence. . . .

In times of inflation, however, a judge's purchasing power may be diminished without reducing the actual number of salary dollars; if their salaries fail to increase as rapidly as prices do, judges can no longer afford the same range of goods and services as before. . . .

It seems to us to follow therefore, that our recommendations with respect to Provincial Court judges' salaries ought to recognize and preserve the purchasing power that those judges' salaries had in earlier years, unless there is clear and convincing evidence of extenuating circumstances.

Second, it is an emblem of a judge's independence that he or she be perceived by those within the larger community to be a person of means commensurate to his or her office. If a judge is perceived to be in straitened or reduced circumstances, he or she is more likely to appear to the public to be susceptible to financial pressure or influence, whether or not that really is the case. Preservation of the status that people expect of judges requires that a certain level of expenditure be maintained. Judges, therefore, have somewhat less flexibility than others with similar incomes in the manner in which they respond to increasing prices of goods and services. This fact, in our view, deserves some weight in considering what salaries are appropriate.

Finally, those who come to the bench from private practice incur a significant one-time income tax liability because the canons of independence require that they liquidate their interest in their law partnership upon taking office.

The principles of judicial independence in general, and these specific matters in particular, have served as guiding principles in the 1992 Advisory Committee's attempt to establish fair and equitable levels of judicial remuneration and we believe that our recommendations are illustrative of this fact.

The 1992 Compensation Advisory Committee Report on Compensation

Introduction

In the normal course of the work of the Compensation Advisory Committee, appointed under Section 7.1 (2) of the *Provincial Court Act*, R.S.B.C. 1979 c.341, the Committee would have reported to the Attorney General by December 31, 1992.

In this event, however, the appointment of the Compensation Advisory Committee came late in 1992 and the Advisory Committee's mandate was expanded to include the development of recommendations for alternative ways in which to establish judicial remuneration levels. The year-end deadline therefore was foregone, although for official purposes this is the 1992 Report of the Compensation Advisory Committee on Provincial Court Judges.

The *Provincial Court Act*, since 1986 amendments, requires that, every second year, the Attorney General appoint a three-member Compensation Advisory Committee to make a report "on all matters respecting the remuneration, allowances and benefits of judges of the court and to make recommendations with respect to those matters". Three such committees have been appointed and have reported, in 1986, 1988 and 1990.

The 1992 Compensation Advisory Committee was appointed December 23, 1992 by the Honourable Colin Gabelmann, Attorney General for the Province of British Columbia. The Committee members appointed are:

Chair, Mr. Charles J. Connaghan, President
C.J.Connaghan and Associates Ltd.
Management and Industrial Relations Consultants, as Chair.

Professor Elizabeth R. Edinger
University of British Columbia Faculty of Law.

Ms. Marie Jessup
Vice-President, Finance and Bursar, Capilano College.

Richard R. Sugden was retained as Legal Counsel to the Committee.

In addition to the statutory assignment, the Attorney General asked the 1992 Committee to consider and make recommendations about ways, other than those set out in the *Provincial Court Act*, by which judicial remuneration levels might be established in future.

The statutory and additional responsibilities have been addressed by the 1992 Committee and, as requested, the findings and recommendations of the Committee are set out in two parts in this Report entitled "The Report on Compensation" and the other entitled "The Report on Process".

Introduction cont'd

Information Gathering

In reading the findings and recommendations of each part of the Report of the 1992 Compensation Advisory Committee it will be useful to understand the information-gathering process employed by the Advisory Committee. The Advisory Committee reviewed the history of the Provincial Court of British Columbia and pursued the following steps:

1. Comparisons

Current remuneration packages for Provincial Court Judges in British Columbia were examined and compared with those of such comparable groups as federal judges, judges of provincial courts in other provinces, members of quasi-judicial bodies, and practising lawyers in British Columbia.

2. Past and Existing Mechanisms

The workings of previous Compensation Advisory Committees were studied, as were potential alternative mechanisms currently in place elsewhere in Canada and abroad.

3. Visit to the Court

The 1992 Advisory Committee members, accompanied by Chief Judge Diebolt, toured court facilities and met with judges in six communities. Through these visits, the committee members learned of ongoing changes in the Provincial Court system, including innovations proposed by the judges which subsequently have been implemented. For example, pre-trial settlement conferences in small claims cases have been introduced and have proved to be a highly efficient mechanism for disposing of such matters.

4. Meetings

On February 4 and 5, 1993, the Advisory Committee met with and received written and oral submissions from the British Columbia Branch of the Canadian Bar Association, the Law Society of British Columbia, the Provincial Court Judges Association, the Judicial Council, Chief Judge Diebolt and one other judge.

5. Submissions

The Advisory Committee received and reviewed a written submission from the Government of British Columbia.

THE REPORT ON COMPENSATION

The Provincial Court of British Columbia was created in 1969 with the passage by the Legislative Assembly of the *Provincial Court Act*. The Court took on its present form in 1975 when a new *Provincial Court Act* provided for the establishment of a full-time bench composed solely of trained lawyers.

The 1992 Compensation Advisory Committee has used this latter date as a logical starting point for purposes of a review of the history of remuneration for Provincial Court judges.

Salary History

In 1975, puisne judges of the Provincial Court were paid an annual salary of \$35,000. Increases of approximately \$2,000 in each of the next three years brought the 1978 annual salary level to \$41,762. The increases in the next three-year period were larger, bringing the annual salary to \$65,000 by 1981. This level remained unchanged, except for a small increase in 1984, until 1985 when the base salary was set at \$66,963 and, in addition, judges were provided a Judicial Benefit Plan equal to 10% of the base salary. This brought the total compensation package to \$73,658, where it remained through 1986.

During the period from 1975 to 1986, judicial salaries were established through direct negotiations between the judges and the provincial government. In 1986, amendments to the *Provincial Court Act* provided for the creation of the Compensation Advisory Committee process.

The 1986 Advisory Committee recommended that Provincial Court judges receive a retroactive increase of \$2,209 for 1986 and that, effective January 1, 1987, the Judicial Benefit Plan be abolished, its cash equivalent be added to the base salary and the new base salary be increased by 5% in 1987 and by an additional 5% in 1988. The recommended changes would have provided for a 1987 salary of \$79,661.

The British Columbia Government of the day did not grant the recommended retroactive increase for 1986 but did convert the Judicial Benefit Plan in 1987. It then established the 1987 annual salary at \$83,644, some \$4,000 more than the level recommended by the 1986 Advisory Committee. The Government also disregarded the recommendations of the Advisory Committee for 1988 and set the salary level at \$87,826.

The 1988 Advisory Committee recommended a 4% increase in each of 1989 and 1990, which would have increased salaries to \$91,339 and \$94,993, respectively. Instead, the Government set the levels at \$94,000 for 1989 and \$98,000 for 1990.

The Advisory Committee appointed in 1990 recommended more substantial increases than had its predecessors, proposing salaries of \$111,000 for 1991 and \$116,000 for 1992. Again, the Government of the day did not follow the recommendations, this time providing increases below those proposed by the Advisory Committee. The result was a 1991 salary of \$103,000 and a 1992 salary of \$107,000, the current level.

Comparative Frameworks

The 1992 Compensation Advisory Committee has found that one of the most difficult challenges in determining fair judicial remuneration levels is to find appropriate comparisons. This challenge reflects the fact that an independent judiciary is a cornerstone of a democratic society and there is a risk of impairing that independence when certain linkages are made, for example, to other segments of the public service.

Therefore, the Advisory Committee has studied a number of comparative frameworks in an effort to ensure a sound foundation upon which to make recommendations that will support the desire to preserve the independence of the judiciary, both in fact and in perception.

Other Judges

The Advisory Committee made the obvious comparison between remuneration of Provincial Court judges and that of judges of other courts, mindful of the argument that "a judge is a judge is a judge" and that no logical or philosophical reason exists for significant differences. We looked first at courts within British Columbia.

County/Supreme Court

In submissions to the Advisory Committee, the Provincial Court Judges Association, the Law Society of British Columbia and the British Columbia branch of the Canadian Bar Association all argued that the gap between salaries paid to Provincial Court judges and those of federally-appointed and federally-paid Supreme Court judges should be significantly narrowed, if not eliminated.

In the period reviewed by the Advisory Committee, there has been a gap between the Provincial Court and the federally-appointed and federally-paid County and Supreme Court salary levels. The historical relationship was set out for the Advisory Committee in both the submissions of the Provincial Court Judges Association and the Law Society, which noted that when the County and Supreme Courts were merged in 1990, County Court judges became Supreme Court judges and their salary level went up by \$5,000 a year to the Supreme Court level.

In 1974, the year before the *Provincial Court Act* was changed to create a Provincial Court composed only of lawyers, County Court judges were paid 6% more than their colleagues on the Provincial Court bench. In 1975, when County Court salaries were increased by \$9,000 a year, the gap rose to 31%. It was narrowed to 7% by 1981, but in the years since then has significantly widened to where it now is at an all time high of 46%.

Today, the annual salary for British Columbia Supreme Court judges is \$155,800, compared with \$107,000 for the Provincial Court.

The Advisory Committee recognizes the complexities which result from the co-existence of the federal and provincial court systems. Still, we are convinced that the current 46% differential in salaries between the two is unacceptable and that steps should be taken in the near future to significantly reduce this difference. Our recommendations should be seen as only the first stage in this process.

Other Provincial Courts

In 1992, the salary level for Provincial Court judges in British Columbia ranked fourth among those of Provincial Court judges in Canada's 10 provinces.

The Provincial Court Judges Association and the Law Society, in their submissions to the Advisory Committee, argued that for purposes of this review, a valid salary comparison should be limited to the Provinces of Ontario, Quebec and Alberta which, like British Columbia, have more than 100 Provincial Court judges. In this comparison, the salary level for British Columbia Provincial Court judges stands fourth among four and is more than \$7,000 a year below the four-province average.

Practitioners

The Advisory Committee found that a second logical basis for salary comparison is found in the pool from which Provincial Court judges are drawn -- practising lawyers in British Columbia.

The *Provincial Court Act* permits a judicial appointment after five years at the Bar. However, the Provincial Court Judges Association points out that, on average, Provincial Court judges here have 14.3 years of call before their appointment to the bench and that current judges have served the Court for an average of 10.3 years. That represents, on average, a total of 24.6 years of practical legal experience. The Judges Association asserts that the current Provincial Court salary level does not compare favourably with salaries received by practitioners with similar or even less experience.

Administrative Tribunals

The Provincial Court Judges Association suggested that, while the judicial role differs markedly from that of officials in the civil service, the Advisory Committee, in its search for appropriate comparisons of judicial salaries, might find useful benchmarks in the remuneration received by members of administrative and quasi-judicial tribunals. The Association also pointed out that the Ontario Provincial Courts Committee has argued that Provincial Court judges, at a minimum, should receive salaries as high as those of heads of Ontario administrative tribunals.

Senior Managers - Civil Service

The Advisory Committee has concluded that a comparison between salary levels of judges and those of senior officials in the civil service is inappropriate in this review. This decision is based upon the Advisory Committee's understanding of the unique role of the judiciary in our democratic society, the unique nature of the judicial task and the absolutely essential requirement for the judiciary to be, and to be seen to be, independent from the legislative and executive branches of government.

Position of Government

The 1992 Compensation Advisory Committee, while appointed by the Attorney General of British Columbia, has conducted itself as an independent review body. In the course of its considerations, the Advisory Committee sought and received comments relative to the position of the Government of British Columbia.

"The provincial position" on the issues the Advisory Committee was asked to examine -- salary levels, pension plan and the mechanism for setting remuneration -- was set out in a submission from the Minister of Finance and Corporate Relations, the Honourable Glen Clark.

No specific recommendations were made as to salary adjustments but the submission did raise a number of points for consideration, among them the fact that Provincial Court judges in British Columbia have received salary increases in each of the last six years.

The provincial position further noted that there is no scheduled 1993 adjustment for management staff in the provincial public service and that a proposed 2% increase for senior managers has been delayed. The submission concludes by noting that the "current financial position of the Province restricts the opportunity to provide enhancements in the overall benefit package for Provincial Court judges".

REMUNERATION RECOMMENDATIONS

The 1992 Compensation Advisory Committee has brought to its work a clear recognition of current economic realities. In our assessment of salary levels and matters relating to pension and to other benefits, we have sought to take fully into account all relevant factors, including those specifically brought to our attention by the Government of British Columbia. In each instance, we have arrived at our conclusions based upon objective and independent assessment of these factors.

We recognize political sensitivities, particularly related to the current budgetary position of the Province, but we also recognize that the statutory role assigned to this committee requires that we put forward recommendations which, based upon objective analysis of the evidence before us, we believe to be fair and reasonable.

Therefore, on the matters before the advisory committee under the heading of remuneration, we recommend the following.

Recommendations cont'd

Salary Levels

Puisne Judges

Having concluded that it is inappropriate to formally link judges' salary levels in British Columbia directly with those of any one or more other groups in our society, the Advisory Committee found itself forced to find another means to make an independent and impartial determination of fair levels of judicial remuneration.

In our analysis, we concluded that the 1990 Compensation Advisory Committee found such a means in the use of leading economic indicators as guides to determination of a base salary level. The 1990 Advisory Committee examined several indices, including the Industrial Aggregate and Weekly Earnings in Manufacturing. We have concluded that the most relevant indicator for our purposes is the Consumer Price Index. The CPI documents the extent to which real earnings are being eroded by inflation, reflects the current state of the economy, and is one of the most widely recognized economic indicators in our society. For example, the percentage change in the Vancouver CPI between February 1992 and February 1993 was 4.3%.

In arriving at our recommended salary level for 1993, we have used the 1974 salary of \$35,000 as a base and calculated the adjustments which would have been required to modify judges' salaries according to the changes in the Vancouver CPI over the years since 1974. Such adjustments would bring the salary level in 1993 to \$118,402 annually. The Advisory Committee believes this level to be appropriate for Provincial Court judges in British Columbia in 1993 and therefore recommends that:

Effective from January 1, 1993, puisne judges of the Provincial Court of British Columbia receive an annual salary of \$118,402.

Past Advisory Committees traditionally have made recommendations for the two years proceeding their appointment. However,

owing to the fact that in our REPORT ON PROCESS we have recommended a new mechanism for setting judicial remuneration effective in 1994, the Advisory Committee believes it would be inappropriate to make salary recommendations for that year.

Recommendations cont'd

Chief and Associate Chief Judges

Historically, there has been some difference between the salary of puisne judges and that of the Chief and Associate Chief judges of the Provincial Court. None of the groups which met with or made submissions to the Advisory Committee expressed opinions on an appropriate level of difference. The Advisory Committee chose an historical review as the most responsible course of action to arrive at a determination on this matter.

We found that, at the time the annual salary of the puisne judges of the Provincial Court was \$35,000, the Chief Judge received an additional \$4,000 and the Associate Chief Judges received an additional \$3,000 each, differentials of 11.4% and 8.6%, respectively. In the years since, the dollar value differentials have increased to \$9,000 for the Chief Judge and \$4,000 for the Associate Chief Judges, or 8.4% and 3.7%, respectively.

In the judgment of the Advisory Committee, there exists no tradition on the Provincial Court whereby the Chief and Associate Judges receive significantly higher salaries than puisne judges. The Advisory Committee finds no reason to depart from this circumstance.

However, over the last eight years, adjustments in salary levels have not been accompanied by changes in the dollar differential between the salaries of puisne judges and the salaries of the Chief and Associate Chief judges. At the same time, the additional salary received by the Associate Chief judges today is only \$1,000 greater than it was in 1974. The Advisory Committee believes some adjustment in the dollar differentials is appropriate and therefore recommends that:

Effective from January 1, 1993

- ☐ The additional annual remuneration received by the Chief Judge be increased to \$10,000 from the present \$9,000; and
- ☐ The additional annual remuneration received by the Associate Chief Judges be increased to \$6,000 from the present \$4,000.

Recommendations cont'd

Pensions

The 1992 Compensation Advisory Committee has noted with some dismay that pension recommendations made by the 1988 Advisory Committee, accepted and approved by the Legislature's Select Standing Committee on Labour and Justice and then by the Legislative Assembly itself, have not been put into effect. In arriving at our recommendations in regard to pension issues, we have reviewed the current situation and the recommendations of the 1988 Advisory Committee.

Current Situation

The provisions of the current Provincial Court judges' pension plan are set out in two statutes, the *Pension (Public Service) Act* and the *Provincial Court Act*. Under the current plan, the judges contribute 5.5% of salary up to the Canada Pension Plan (CPP) maximum, and 7% thereafter, while the Government's contribution is 8.5% up to the CPP maximum and 9.5% after that. The vesting period is 10 years. Judges with 10 years of service become eligible for early retirement without penalty at age 60.

The benefit is paid out at the rate of 2% times the average salary of the five highest-earning years times the number of years of pensionable service. The latter accrue at the rate of 1.5 per year of contributory service. In other words, to receive the maximum benefit level of 70%, a judge must have 23.33 years of contributory service.

Previous Recommendations

In its report, the 1988 Compensation Advisory Committee addressed the pension plan and recommended that:

1. Pension benefit calculations be based on the best three-year average earnings rather than the five-year average; and
2. Judges with ten years of contributory service be permitted to take early retirement at age 55 without penalty.

As already noted, these recommendations were approved by the Legislative Assembly but not implemented.

Recommendations cont'd

The Provincial Court Judges Association's Position

In its submissions to the 1992 Advisory Committee, the Provincial Court Judges Association argued that pension provisions must be tailored to the needs of judges who usually are not appointed to the bench until they are at least 40 years of age. The Association emphasized that the work of judges is extremely stressful in terms of both the nature of the work and the workload and argued that the current requirement of 23 years on the job to qualify for full pension benefits is too long.

The Association called for a judges' pension plan separate and apart from the public service pension plans and for conditions that would:

- ☐ Grant the right to a full pension after 20 years of service, regardless of age;
- ☐ Upon the death of a retired judge, have the surviving spouse receive a pension equal to two-thirds of the judge's pension;
- ☐ See no pension reduction resulting from the provision to cover a surviving spouse;
- ☐ See no pension reduction resulting from receipt of Canada Pension Plan monies; and
- ☐ Base pension benefits on salary at termination rather than the highest five-year average.

Government's Position

In presenting the provincial position, the submission from the Minister of Finance and Corporate Relations noted that the current judges' pension plan and proposed amendments are under review by the Superannuation Commission and that any changes to the plan would require consultation with that body. The submission also stated that the existing plan for judges is superior to that of senior managers in government, with the exception of Deputy Ministers.

Recommendations cont'd

Pension Recommendations

The 1992 Advisory Committee has concluded that the whole question of judges' pension benefits is exceedingly important and extremely complex. In the time available to it, the Advisory Committee has found it impossible to conduct a full analysis of all of the issues, including the implications of the new proposals put forward by the Provincial Court Judges Association. Consequently, we do not make specific recommendations with regard to those 1992 proposals.

However, we believe some action on pensions is required. Lengthy postponement of decisions on this matter can have unfortunate consequences. For example, in 1990 a number of judges elected not to take advantage of a one-time only early retirement scheme because they had been led to believe that changes to the existing pension plan were imminent. These judges remained on the bench and the changes have not yet been implemented. Having found no evidence to suggest that the recommendations of the 1988 Advisory Committee, which were approved by a legislative committee and by the legislature itself, have become unacceptable today -- and notwithstanding the current review by the Superannuation Commission -- the 1992 Advisory Committee recommends that:

The changes to the Provincial Court Judges' Pension Plan recommended by the 1988 Compensation Advisory Committee be put into effect as soon as is reasonably practical. Specifically that:

- ☐ Pension benefit calculations be based on the best three-year average earnings, rather than the best five-year average; and
- ☐ That judges with ten years of contributory service be permitted to take early retirement at age 55 without penalty.

In addition, we recommend that the government seriously consider the 1992 pension proposals submitted by the Provincial Court Judges Association.

Recommendations cont'd

Other Benefits

In its analysis of the issues, the 1992 Compensation Advisory Committee found three principal matters of concern in terms of benefits other than salary and pension plan. These come under the following headings:

1. Life Insurance

Under the existing life insurance plan, judges are covered up to the age of 65. The Provincial Court Judges Association and the 1988 Advisory Committee have recommended coverage be extended to the age of 70 for judges who remain on the bench past the age of 65.

2. Dental Coverage

The Provincial Court Judges Association has requested that existing dental benefits be extended to retired Provincial Court judges.

3. Professional Allowance

The Provincial Court Judges Association argues that, to remain apprised of current developments in the law, judges must acquire legal materials and attend educational seminars. The Chief Judge's office often lacks the funds to cover expenses incurred in doing so, leaving it to the individual judges to cover such costs at their personal expense. The Association has recommended that a fund be established in the Chief Judge's office to enable each judge to draw up to \$2,000 per year for expenses approved by the Chief Judge. The Association recommendation suggests this fund would replace monies currently made available to judges for the purchase and cleaning of courtroom attire.

Recommendations cont'd

Benefits Recommendations

1. Life Insurance

The Advisory Committee has noted that, depending upon the age of the individual at the time of appointment to the bench, a judge may have to sit beyond the age of 65 in order to qualify for a full pension. In current circumstances, a judge in that position may continue to sit on the bench for up to five years without life insurance protection. We believe this to be inappropriate.

We also note that the 1988 Advisory Committee's recommendation that life insurance coverage be extended to age 70 was approved by the legislature and that no evidence has been presented to suggest that what was acceptable then is not acceptable now. Therefore, we recommend that:

Life insurance coverage be extended up to 70 years of age for those judges who sit beyond the age of 65.

2. Dental Coverage

The 1992 Advisory Committee is of the view that retired judges ought to have access to the dental plan. Therefore we recommend that:

Retired judges be made eligible for inclusion in the dental plan but that the required premiums be paid by the judges who thereby benefit.

Recommendations Cont'd - Benefits

3. Professional Allowance

The 1992 Advisory Committee has found that many new challenges, among them those posed by Canada's adoption of the *Charter of Rights and Freedoms*, require our judges to update their knowledge through legal literature, seminars and similar educational forums. Those who do so to enhance their ability to perform their duties on the bench should not be penalized financially for their conscientiousness. Therefore, we recommend that, in addition to current provisions for the purchase and cleaning of judicial attire through the Chief Judge's fund:

Each judge of the Provincial Court receive an annual Professional Allowance in the amount of \$1,500 to defray costs of legal subscriptions and attendance at educational seminars and forums.

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APPENDIX A

Summary of Recommendations

Salary - Puisne Judges

In arriving at our recommended salary level for puisne judges of the Provincial Court for 1993, we have used the 1974 salary of \$35,000 as a base and calculated the adjustments which would have been required to modify judges' salaries according to the changes in the Vancouver Consumer Price Index over the years since 1974. Such adjustments would bring the salary level in 1993 to \$118,402 annually. The Advisory Committee believes this level to be appropriate for Provincial Court judges in British Columbia in 1993 and therefore recommends that:

Effective from January 1, 1993, puisne judges of the Provincial Court of British Columbia receive an annual salary of \$118,402.

Past Advisory Committees traditionally have made recommendations for the two years proceeding their appointment. However,

owing to the fact that in our REPORT ON PROCESS we have recommended a new mechanism for setting judicial remuneration effective in 1994, the Advisory Committee believes it would be inappropriate to make salary recommendations for that year.

Chief Judge and Associate Chief Judges

Over the last eight years, adjustments in salary levels for Provincial Court judges have not been accompanied by changes in the dollar differential between the salaries of puisne judges and the salaries of the Chief and Associate Chief judges. The Advisory Committee believes some adjustment in the dollar differentials is appropriate and therefore recommends that:

Effective from January 1, 1993

- ☐ **The additional annual remuneration received by the Chief Judge be increased to \$10,000 from the present \$9,000; and**
- ☐ **The additional annual remuneration received by the Associate Chief Judges be increased to \$6,000 from the present \$4,000.**

Appendix A

Summary of Recommendations cont'd

Pension Plan

We believe some action on pensions is required. Having found no evidence to suggest that the recommendations of the 1988 Advisory Committee, which were approved by a legislative committee and by the legislature itself, have become unacceptable today -- and notwithstanding the current review by the Superannuation Commission -- the 1992 Advisory Committee recommends that:

The changes to the Provincial Court Judges' Pension Plan recommended by the 1988 Compensation Advisory Committee be put into effect as soon as is reasonably practical. Specifically that:

- ☐ Pension benefit calculations be based on the best three-year average earnings, rather than the best five-year average; and
- ☐ That judges with ten years of contributory service be permitted to take early retirement at age 55 without penalty.

In addition, we recommend that the government seriously consider the 1992 pension proposals submitted by the Provincial Court Judges Association.

Life Insurance

The 1988 Advisory Committee's recommendation that life insurance coverage be extended to age 70 was approved by the legislature. We found no evidence to suggest that what was acceptable then is not acceptable now. Therefore, we recommend that:

Life insurance coverage be extended up to 70 years of age for those judges who sit beyond the age of 65.

Appendix A

Summary of Recommendations cont'd

Dental Coverage

The 1992 Advisory Committee is of the view that retired judges ought to have access to the dental plan. Therefore we recommend that:

Retired judges be made eligible for inclusion in the dental plan but that the required premiums be paid by the judges who thereby benefit.

Professional Allowance

The 1992 Advisory Committee has concluded that judges who choose to update their knowledge through legal literature, seminars and similar educational forums, should not be penalized financially for their conscientiousness. Therefore, we recommend that, in addition to current provisions for the purchase and cleaning of judicial attire, through the Chief Judge's funds:

Each judge of the Provincial Court receive an annual Professional Allowance in the amount of \$1,500 to defray costs of legal subscriptions and attendance at educational seminars and forums.

APPENDIX B

Table of Provincial Court Judges Salaries

	CJ ²	ACJ ³	Puisne	% Diff CJ and ACJ	% Diff CJ and Puisne	% Diff ACJ and Puisne
B.C.	116 000	111 000	107 000	4.5	8.4	3.7
ALTA.	128 220	121 092	113 964	5.9	12.5	6.3
Sask.	95 705	n/a	90 000	n/a	6.3	n/a
Man.	101 017	96 017	94 017	5.2	7.4	2.1
Ont.	142 000	136 085	124 250	4.3	14.3	9.5
Que.	132 786	128 246	113 492	3.5	17	13
N.B.	100 672	97 630	94 614	3.1	6.4	3.2
N.S.	108 100	n/a	102 100	n/a	2.4	n/a
P.E.I.	105 340	n/a	102 840	n/a	2.4	n/a
NFLD.	95 128	n/a	90 128	n/a	5.5	n/a
AVG. INCL. B.C.	112 497	115 012	103 240	4.4	8.3	8.2
AVG. EXCL. B.C.	112 105	115 814	102 823	4.4	8.2	6.8

¹ Source: Human Resource Services Branch, Alberta, Department of the Attorney General

² Chief Justice

³ Associate/Assistant Chief Justice

